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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RAY BELTRAN,   )
)
                    Petitioner,   )
)
          v.   )   1:07CV908
)
STATE OF NORTH CAROLINA,   )
)
                    Respondent.   )

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a state prisoner, has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Clerk of Court received the submission on November 29, 2007, which Petitioner had dated as of November 27, 2007. This petition cannot be further processed because court records reveal that Petitioner has already attacked the same conviction and sentence in a previous § 2254 petition [1:03CV742]. Consequently, Petitioner must apply to the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current petition. This is required by 28 U.S.C. § 2244. See AO 241 (MDNC 3/97), Instructions, paragraph 5, which is enclosed. Because of this pleading failure, this particular petition should be dismissed. In forma pauperis status will be granted for the sole purpose of entering this Recommendation and Order.

IT IS THEREFORE RECOMMENDED that this petition be dismissed for failure to apply to the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current petition as is required by 28 U.S.C. § 2244.

IT IS THEREFORE ORDERED that in forma pauperis status is granted for the sole purpose of entering this Recommendation and Order.

IT IS FURTHER ORDERED that the Clerk shall send Petitioner a copy of this Recommendation and Order and instruction forms for filing § 2254 petitions in this Court and Motions for Authorization in the court of appeals, an application to proceed in forma pauperis (upon request), and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

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Wallace W. Dixon, U. S. Magistrate Judge

December 3, 2007

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